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SERVICE DATE - DECEMBER 7, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-589X

MONON RAIL PRESERVATION CORPORATION – ABANDONMENT EXEMPTION – IN  
MONROE COUNTY, IN

STB Docket No. AB-295 (Sub-No. 4X)

THE INDIANA RAIL ROAD COMPANY – DISCONTINUANCE OF SERVICE  
EXEMPTION – IN MONROE COUNTY, IN

Decided: December 6, 2001

In a petition filed on August 21, 2001,<sup>1</sup> Monon Rail Preservation Corporation (Monon) and The Indiana Rail Road Company (INRD) (collectively, petitioners) seek exemptions under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 for Monon to abandon and INRD to discontinue service over a 1,500-foot segment of Monon's Ellettsville Line,<sup>2</sup> extending from milepost Q213.41 to milepost Q213.69 at Ellettsville, in Monroe County, IN (the line). We will grant the exemptions, subject to standard employee protective conditions.

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<sup>1</sup> Notice of the filing was served and published in the Federal Register on September 10, 2001 (66 FR 47057).

<sup>2</sup> INRD was granted local trackage rights over the entire 4.26-mile Ellettsville Line in The Indiana Rail Road Company – Trackage Rights Exemption – Monon Rail Preservation Corporation, STB Finance Docket No. 33669 (STB served Oct. 16, 1998). Subsequently, INRD was authorized to operate the Ellettsville Line in The Indiana Rail Road Company – Operation Exemption – Monon Rail Preservation Corporation, STB Finance Docket No. 33670 (STB served Feb. 21, 2001). Although petitioners characterized INRD's transaction as a discontinuance of trackage rights, they are technically seeking, with respect to the 1,500-foot segment, discontinuance of INRD's service under the operating agreement, which superseded the trackage rights.

## BACKGROUND

Monon acquired the Ellettsville Line from CSX Transportation, Inc. (CSXT), in 1998.<sup>3</sup> Petitioners seek to abandon and discontinue service over the northern end of the Ellettsville Line, where the only shipper, Wickes Lumber Company (Wickes), is located. According to petitioners, Wickes shipped 19 carloads of lumber in 1999, 10 carloads in 2000, and 3 carloads in the first 5 months of 2001. If the exemptions are granted, petitioners have arranged to provide alternative service to Wickes through the use of a transloading facility in Indianapolis, IN, and later from a transloading facility that is being built in Bloomington, IN.

Petitioners are seeking this abandonment and discontinuance to further an agreement reached with the Indiana Department of Transportation (INDOT) in order to avoid reconstructing a highway crossing over the line. INDOT has begun construction to realign and improve State Road 46 between Bloomington and Ellettsville. This includes widening the highway from two to five lanes where it crosses the line, close to the end. If the line is not abandoned and a highway crossing is necessary, Monon would have to maintain it.<sup>4</sup> Petitioners contend that the limited amount of traffic on the line does not warrant the costs associated with constructing and maintaining a highway crossing.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving Monon of

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<sup>3</sup> See Monon Rail Preservation Corporation – Acquisition Exemption – Lines of CSX Transportation, Inc., In Monroe County, IN, STB Finance Docket No. 33668 (STB served Oct. 16, 1998). The Ellettsville Line had been authorized for abandonment in CSX Transportation, Inc. – Abandonment Exemption – In Monroe County, IN, STB Docket No. AB-55 (Sub-No. 548X) (STB served Sept. 19, 1997), but CSXT never consummated the abandonment and instead sold the Ellettsville Line to Monon.

<sup>4</sup> The petitioners estimate the cost to the State of the new highway crossing to be \$353,235.00 and Monon's annual maintenance costs to be \$6,051.00.

the burdens associated with ownership and maintenance of the line, including the added maintenance of a new highway crossing, and by allowing the petitioners to apply their assets more productively elsewhere [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power. Wickes, the only shipper on the line, has alternative transportation available to it.<sup>5</sup> Nevertheless, to ensure that this shipper is informed of our decision, we will require petitioners to serve a copy of this decision on Wickes within 5 days of the service date and to certify to us that they have done so.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

Petitioners have submitted an environmental report with their petition and have notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on October 19, 2001, requesting comments by November 19, 2001.

In the EA, SEA noted that the Indiana Department of Natural Resources, State Historic Preservation Officer (SHPO), requires additional information from the petitioners to determine whether the line has historical significance. In a letter, the SHPO now states that it has not identified any historic buildings, structures, districts, objects, or archaeological resources listed in or eligible for inclusion in the National Register within the probable area of potential effects. No other comments to the EA were filed. Accordingly, no environmental condition will be imposed.

We conclude that the proposed abandonment and discontinuance, if implemented, will not significantly affect either the quality of the human environment or conservation of energy resources. Although SEA has indicated that, following the line's abandonment and

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<sup>5</sup> Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

discontinuance, the right-of-way may be suitable for other public use under 49 U.S.C. 10905, no one has sought a public use condition, and none will be imposed.<sup>6</sup>

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment and discontinuance of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co – Abandonment – Goshen, 360 I.C.C. 91 (1979).

2. Petitioners are directed to serve a copy of this decision on Wickes within 5 days after the service date of this decision and to certify to the Board that they have done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by December 17, 2001, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this exemption will be effective on January 6, 2002. Petitions to stay must be filed by December 26, 2001, and petitions to reopen must be filed by January 2, 2002.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), Monon shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Monon’s filing of a notice of consummation by December 7, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier

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<sup>6</sup> Public use requests were due no later than 20 days after publication of the notice of the petition for exemption in the Federal Register, or by October 1, 2001.

to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary